

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PEDIPED INFANT FOOTWEAR LLC,

Plaintiff,

v.

KUDOS LEATHERGOODS LTD d/b/a
JACK AND LILY and ROB BUELL

Defendants.

CASE NO. 08 CIV 3572 (LTS)

DECLARATION OF KIMBERLY A. BERRY

I, Kimberly A. Berry, declare as follows:

1. I am a mother of four children and the owner of The Berry Patch, located at 576 Rush Drive, San Marcos, California. I have personal knowledge of the matters stated herein and, if called as a witness, I could and would competently testify to the following matters.

2. For the last five or six years, the Berry Patch has been selling children's clothing, puzzles, educational toys and footwear. Prior to selling these products, I designed other children's products, such as furniture and beanie babies.

3. The Berry Patch sells high-end products. The two main brands of children's footwear we carry are Pom D' Api and pediped. Pom D' Api is a European company whose children's shoes sell for more than \$100 a pair. Pediped shoes are actually the least expensive shoes The Berry Patch sells, but I carry pediped's line of shoes because I consider the style and quality to be high-end despite the price.

4. Before pediped, Robeez was the only brand of children's soft-soled footwear in the market.

5. Pediped soft-soled shoes are different from Robeez and the other brands available today. The style and quality of pediped's shoes sets them apart from the other brands.

6. Pediped's shoes are not cutesy like the other brands. For example, Robeez shoes have hearts, bears and other cutesy features. It is hard to pair cutesy looking shoes with a variety of outfits. Pediped shoes are elegant looking and easy to pair with many different outfits. I know this because three of my children wore pediped soft-soled shoes.

7. The stitching on pediped's soft-sole shoes is different. The only other brand that I am aware of that has this stitching is Jack & Lily.

8. I also believe that the shape of pediped shoes is different from other brands. Pediped shoes look like they conform to a child's foot, but with enough space to give the feet some room.

9. I love the purple box that pediped shoes come in. The box is elegant looking, especially because of the quality and the gold foil. The box is not flimsy like the packaging used by the other brands. The box looks expensive. My husband is in the marketing industry, so I know what's involved in packaging, including costs. It's clear that Pediped spent money on its packaging compared to the other brands.

10. My customers love pediped shoes because the shoes are elegant, not cutesy, and are high quality. Their kids wear pediped shoes until they outgrow the sizes.

11. Many of my customers are repeat pediped customers, including customers from Canada and Europe. One of my customers is moving and asked if I could ship pediped shoes to her new home in Japan.

12. Although the Berry Patch does not sell Jack & Lily shoes, I've seen their shoes online. The Berry Patch would not carry Jack & Lily shoes because many of their styles are too cutesy.

13. Jack & Lily's Shoes definitely look like pediped soft-soled shoes.

14. Jack & Lily's white pair of shoes with the hearts is a copy of pediped's Olivia shoe. I don't know the name of this particular style, I just call it the Olivia because it's a copy of pediped's Olivia shoe.

15. Jack & Lily also copied pediped's Samantha shoe. Both shoes are exactly alike except for the cut-out edges that Jack & Lily's shoe has. The black & white version of this shoe also looks like pediped's Samantha shoe.

I declare under penalty of perjury that the foregoing is true and correct.

Date: June 2, 08

By: 